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DRAFT REPORT OF THE COMMISSION

Rapporteur: Mr. François-Xavier NGOUBEYOU

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* E/CN.4/1994/L.10 and addenda will contain the chapters of the report relating to the organization of the session and the various items on the agenda. Resolutions and decisions adopted by the Commission, as well as draft resolutions and decisions for action by, and other matters of concern to, the Economic and Social Council will be contained in documents E/CN.4/1994/L.11 and addenda.

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1994/30. Assistance in the field of the administration of justice and human rights

The Commission on Human Rights,

Recalling its resolution 1993/32 of 5 March 1993 and resolution 1993/41 of 5 March 1993 in which, inter alia, it stressed the desirability of providing States, at their request, with continued assistance in the field of the administration of justice,

Mindful of the recommendations relating to the administration of justice and human rights contained in the Tunis Declaration (A/CONF.157/AFRM/14) adopted by African States at the Regional Meeting for Africa of the World Conference on Human Rights,

Mindful also of the recommendations relating to human rights in the administration of justice contained in the Vienna Declaration and Programme of Action (A/CONF.157/23) adopted by the World Conference on Human Rights, held at Vienna from 14-25 June 1993,

Welcoming General Assembly resolution 48/137 of 20 December 1993 entitled "Human rights in the administration of justice",

Noting with satisfaction the report of the Secretary-General on advisory services in the field of human rights, including the Voluntary Fund for Technical Cooperation in the Field of Human Rights (E/CN.4/1994/78 and Corr.1 and Add.1),

Emphasizing the principle of the indivisibility and interdependence of all human rights and fundamental freedoms,

Bearing in mind that the validity and universality of human rights must be promoted and protected by all,

Reaffirming the primary responsibility of all Governments to ensure respect and protection for human rights and fundamental freedoms,

Aware that the historical, cultural and traditional contexts should allow each society to develop its own national and regional mechanisms to ensure the promotion and protection of human rights,

Recognizing that the rule of law and the proper administration of justice are prerequisites for sustainable economic and social development,

Aware of the importance of national and regional intergovernmental human rights bodies and institutions in the promotion and protection of human rights,

1. Emphasizes that civil and political rights cannot be separated from economic, social and cultural rights or from rights embodied in other international instruments on human rights;

2. Reaffirms the standards set forth in the International Bill of Human Rights, the African Charter on Human and Peoples' Rights and other international and regional human rights instruments;

3. Acknowledges that it is the primary responsibility of all Governments to promote and protect human rights;

4. Commends the considerable efforts of African and other developing countries to improve the administration of justice and to promote and protect human rights notwithstanding the limited financial and material resources at their disposal;

5. Urges Governments to pay more attention to the needs of the institutions concerned with the administration of justice by allocating more human and material resources to them to enable them to contribute more efficiently to the promotion and protection of human rights;

6. Appeals to Governments to include in their national development plans the administration of justice as an integral part of the development process and to allocate adequate resources for the provision of legal aid services with a view to the promotion and protection of human rights;

7. Appeals to the international community to provide assistance, at the request of the Governments concerned, for the provision of, inter alia, legal aid services and for the general improvement of the judicial and penal infrastructures with a view to ensuring the promotion and protection of human rights in African and other developing countries;

8. Invites the international community to respond favourably to requests for financial and technical assistance made by institutions concerned with the promotion and protection of human rights in African and other developing countries with a view to enhancing and strengthening their national capacities to promote and protect human rights consistent with the standards set forth in international and other human rights instruments;

9. Commends those developed countries that have over the years given financial assistance to the United Nations programme of advisory services and

technical assistance in the field of human rights, and appeals to them to consider increasing their assistance;

10. Urges the Secretary-General to consider favourably applications for assistance made by African and other developing countries regarding the creation and strengthening of national institutions concerned with the administration of justice within the framework of the United Nations programme of advisory services and technical assistance in the field of human rights;

11. Encourages the Governments of African and other developing countries to avail themselves of the United Nations programme of advisory services and technical assistance in the field of human rights, particularly with a view to strengthening national institutions concerned with the administration of justice;

12. Requests the Secretary-General to report to the Commission at its fifty-first session on the provision of technical assistance and advisory services in the field of the administration of justice to Governments desiring to improve their protection and promotion of human rights.

55th meeting
4 March 1994
[Adopted without a vote.]

1994/31. Human rights and forensic science

The Commission on Human Rights,

Recalling its resolution 1993/33 of 5 March 1993,

Welcoming the report of the Secretary-General on human rights and forensic science (E/CN.4/1994/24), submitted pursuant to its resolution 1993/33,

Welcoming also the preliminary list of organizations and individual experts in forensic science compiled by the Secretary-General in his report and also the organizations mentioned in his previous report (E/CN.4/1993/20),

Expressing its gratitude to the Governments and organizations that recommended names of organizations and experts for the preliminary list,

Conscious that other organizations and individual experts in forensic science should be added to the preliminary list,

Welcoming the contacts maintained by the Working Group on Enforced or Involuntary Disappearances with certain organizations and individuals in the

field of forensic science and human rights and the elaboration by the Working Group of a preliminary scheme for establishing a standing team of forensic experts,

Noting that the need by Governments, intergovernmental organizations and non-governmental organizations for forensic scientific expertise in investigating deaths and clarifying disappearances has been emphasized in the reports of the Working Group and of the Special Rapporteur on extrajudicial, summary or arbitrary executions, as well as those of various country rapporteurs,

Noting also that forensic science can help to reunite children of disappeared persons forcefully separated from their parents with their surviving relatives,

Noting further that forensic medicine is an important tool in detecting evidence of torture,

Noting that in many of the countries concerned, sufficient expertise in forensic science and related fields to investigate human rights violations effectively is not available,

Recognizing that training of local teams in responsible exhumation and identification procedures is a prerequisite for the effective investigation of human rights violations,

Aware that a number of Governments have requested the Secretary-General to provide technical assistance in this regard,

Also aware of the experience of United Nations fact-finding investigations supporting the need for a list of experts in forensic science,

Further aware that several special rapporteurs have welcomed efforts towards the institution of a standing team of forensic experts to assist them in carrying out their human rights mandates,

Recalling the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council in its resolution 1989/65 of 24 May 1989,

Considering the proposed model autopsy protocol prepared under United Nations auspices contained in the Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (United Nations publication, Sales No. E.91.IV.1),

1. Invites States to take measures to introduce into their rules and practices the international standards set forth in the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, as well as the model autopsy protocol set forth in the Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions;

2. Requests the Secretary-General again to consult with Governments, relevant United Nations bodies, professional organizations of forensic experts, the organizations mentioned in his reports of 1993 and 1994, and other interested institutions with a view to:

(a) Identifying individual experts who might be asked to join forensic teams or to provide advice or assistance to thematic or country mechanisms, advisory services and technical assistance programmes;

(b) Submitting biographical data on the experts, including professional qualifications, current employment, contact address, gender (the nomination of female experts is encouraged) and the kinds of assistance they could provide; and

(c) Seeking their advice as to the elaboration of principles, guidance, procedures, mechanisms and training, in addition to the Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions;

3. Also requests the Secretary-General to continue efforts to establish, on the basis of these consultations and on the basis of continuing efforts on the part of the Working Group on Enforced or Involuntary Disappearances to render active assistance, a list of forensic experts and experts in related fields who could be requested to help international mechanisms in the field of human rights, Governments and the Centre for Human Rights in providing technical and advisory services, advice in regard to the monitoring of human rights violations and training of local teams and/or assistance in the reunification of families of the disappeared;

4. Further requests the Secretary-General annually to update and to make this list available to the special rapporteurs and experts of the United Nations human rights mechanisms so that they may request these forensic experts to assist

them in evaluating documents and other evidence and to accompany them on country visits;

5. Requests the Secretary-General to provide appropriate resources, within existing overall United Nations resources, to fund the activities of the Centre for Human Rights in implementing the present resolution;

6. Also requests the Secretary-General to report to the Commission at its fifty-second session on progress made in this matter, including:

(a) The latest list of experts; and

(b) A standard arrangement or cooperation service agreement regulating the use of forensic experts, as well as to make such recommendations as he may consider appropriate;

7. Decides to consider the question at its fifty-second session under the agenda item entitled "Question of the human rights of all persons subjected to any form of detention or imprisonment";

8. Also decides to recommend to the Economic and Social Council the following draft decision for adoption:

"The Economic and Social Council, taking note of Commission on Human Rights resolution 1994/31 of 4 March 1994, approves the Commission's requests to the Secretary-General:

(a) To maintain and enlarge the list of forensic experts and experts in related fields who could be requested to help international mechanisms in the field of human rights, Governments and the Centre for Human Rights in providing technical and advisory services, advice in regard to the monitoring of human rights violations and training of local teams and/or assistance in the reunification of families of the disappeared;

(b) To provide appropriate resources, within existing overall United Nations resources, to fund the activities of the Centre for Human Rights in implementing Commission resolution 1994/31 of 4 March 1994".

55th meeting
4 March 1994
[Adopted without a vote.]

1994/32. Question of arbitrary detention

The Commission on Human Rights,

Recalling its resolution 1985/16 of 11 March 1985, in which it requested the Sub-Commission on Prevention of Discrimination and Protection of Minorities to analyse the available information concerning the practice of administrative detention without charge or trial, and to make appropriate recommendations on the use of this practice,

Reaffirming articles 3, 9, 10 and 29 as well as other relevant provisions of the Universal Declaration of Human Rights,

Recalling articles 9, 10, 11 and 14 to 22 of the International Covenant on Civil and Political Rights,

Having taken note with appreciation, at its forty-seventh session, of the revised report by Mr. Louis Joinet on the practice of administrative detention (E/CN.4/Sub.2/1990/29 and Add.1) and of the recommendations formulated therein,

Recalling that the General Assembly, in its resolution 43/173 of 9 December 1988, adopted the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which also covers administrative detention, and that, consequently, there is no longer a purpose in treating the question of administrative detention independently, even if, in certain cases, the procedure of administrative detention gives rise to specific abuses,

Recalling also its resolutions 1991/42 of 5 March 1991, 1992/28 of 28 February 1992 and 1993/36 of 5 March 1993,

Having considered the report of the Working Group (E/CN.4/1994/27),

Having heard the comments made during the fiftieth session of the Commission,

1. Expresses its appreciation to the Working Group on Arbitrary Detention for the conscientiousness with which it has defined its working methods and for the way in which it carries out its task, more particularly for recalling the importance that it attaches to respect for the procedures which it has established in its dialogue with States, and to seeking the cooperation of all those concerned by the cases submitted to it for consideration;

2. Takes note with satisfaction of the Working Group's report, inter alia its point-by-point examination of the requests made in resolution 1993/36, and

thanks the experts for the rigour with which they have performed their task, in the light of the very specific nature of their mandate of investigating cases;

3. Requests the Working Group to continue, in discharging its mandate, to seek and gather information from Governments and intergovernmental and non-governmental organizations, as well as from the individuals concerned, their families or their legal representatives;

4. Invites the Working Group to continue to take account of the need to carry out its task with discretion, objectivity and independence and to continue to improve its methods of work within the framework of its mandate;

5. Takes note of the importance that the Working Group attaches to coordination with other mechanisms of the Commission as well as with the treaty-monitoring bodies, and invites it to persevere in its efforts;

6. Takes note also of the "deliberations" adopted by the Working Group on issues of a general nature (see E/CN.4/1994/27, sect. II) with a view to achieving better prevention and to facilitating the consideration of future cases as well as helping to further strengthen the impartiality of its work;

7. Expresses its profound thanks to Governments which have extended their cooperation to the Working Group and responded to its requests for information, and asks all Governments concerned to demonstrate the same spirit of cooperation;

8. Requests Governments concerned to give the necessary attention to the "urgent appeals" addressed to them by the Working Group on a strictly humanitarian basis and without prejudging the character of the detention;

9. Calls upon Governments concerned to pay due heed to the Working Group's decisions and, where necessary, to take appropriate steps and inform the Working Group, within a reasonable period of time, of the follow-up to the Group's recommendations so that it can report thereon to the Commission;

10. Encourages Governments to implement the recommendations of the Working Group concerning persons who have been detained for a number of years and are mentioned in the report of the Working Group;

11. Also encourages Governments to consider inviting the Working Group to their countries so as to enable the Group to discharge its protection mandate even more effectively and to make concrete recommendations concerning the

promotion of human rights, in the spirit of the advisory or technical assistance services;

12. Welcomes the fact that the Working Group has been informed of the release of many individuals whose situation had been brought to its attention;

13. Expresses its concern at the fact that most cases of arbitrary deprivation of liberty are motivated by exercise of the right to freedom of opinion and expression;

14. Notes with concern that, according to the Working Group, the practice of arbitrary detention is facilitated and aggravated by several factors such as abuse of states of emergency, exercise of the powers specific to states of emergency without a formal declaration, non-observance of the principle of proportionality between the gravity of the measures taken and the situation concerned, too vague a definition of offences against State security, and the existence of special or emergency jurisdictions;

15. Encourages States to endeavour to take appropriate measures to ensure that their legislation in these fields is in conformity with the relevant international instruments;

16. Also encourages States, in accordance with its resolution 1992/35 of 28 February 1992, entitled "Habeas corpus", and with the recommendations of the Working Group, to establish a procedure such as habeas corpus or a similar procedure as a personal right not subject to derogation, including during states of emergency;

17. Requests the Secretary-General to ensure that the Working Group really receives all necessary assistance, particularly in regard to staffing and resources needed to discharge its mandate, including the organization, carrying out and follow-up of missions in countries wishing to invite the Working Group;

18. Decides to extend for a three-year period the mandate of the Working Group, composed of five independent experts, with the task of investigating cases of detention imposed arbitrarily or otherwise inconsistently with the relevant international standards set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments accepted by the States concerned;

19. Requests the Working Group to submit a report to the Commission, at its fifty-first session, and to make any suggestions and recommendations which

would enable it to discharge its task even better, particularly in regard to ways and means of ensuring effective follow-up to its decisions, in cooperation with Governments and to continue its consultations to that end within the framework of its terms of reference;

20. Decides to continue its consideration of the question at its fifty-first session under the agenda item entitled "Question of the human rights of all persons subjected to any form of detention or imprisonment".

55th meeting
4 March 1994
[Adopted without a vote.]

1994/33. Right to freedom of opinion and expression

The Commission on Human Rights,

Guided by the Universal Declaration of Human Rights, which affirms the right to freedom of opinion and expression,

Mindful of the International Covenant on Civil and Political Rights, which reaffirms, in article 19, the right of everyone to hold opinions without interference, as well as the right to freedom of expression, and states that the exercise of the right to freedom of expression carries with it special duties and responsibilities and may therefore be subject to certain restrictions, but that these shall be only such as are provided by law and are necessary for respect of the rights or reputations of others, or for the protection of national security or of public order (ordre public), or of public health and morals,

Mindful also that the International Covenant on Civil and Political Rights states that any propaganda for war or any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law,

Recalling its resolution 1993/45 of 5 March 1993, in which it decided to appoint a special rapporteur on the promotion and protection of the right to freedom of opinion and expression,

Also recalling its resolutions 1984/26 of 12 March 1984, 1985/17 of 11 March 1985, 1986/46 of 12 March 1986, 1987/32 of 10 March 1987, 1988/37 and

1988/39 of 8 March 1988, 1989/31 of 6 March 1989, 1989/56 of 7 March 1989, 1990/32 of 2 March 1990, 1991/32 of 5 March 1991 and 1992/22 of 28 February 1992,

Taking note of resolution 1983/32 of 6 September 1983 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Taking note also of the reports and the final conclusions and recommendations on the right to freedom of opinion and expression submitted to the Sub-Commission at its forty-second, forty-third and forty-fourth sessions by the Special Rapporteurs, Mr. Louis Joinet and Mr. Danilo Türk (E/CN.4/Sub.2/1990/11, E/CN.4/Sub.2/1991/9 and E/CN.4/Sub.2/1992/9 and Add.1),

Considering that the effective promotion of the human rights of persons who exercise the right to freedom of opinion and expression is of fundamental importance to the safeguarding of human dignity,

Noting the comment in the final report of the Special Rapporteurs that the right to freedom of opinion and expression is interrelated with and enhances the exercise of all other human rights,

Deeply concerned by numerous reports of detention of, as well as discrimination, threats and acts of violence and harassment, including persecution and intimidation, against professionals in the field of information, including journalists, editors, writers and authors, publishers and printers,

1. Welcomes the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (E/CN.4/1994/33), and welcomes his observations on the terms of reference that constitute the legal framework within which he will carry out his mandate and his proposed methods of work;

2. Notes that the Special Rapporteur recognizes the need to cooperate with other special rapporteurs, special representatives, independent experts, working groups and other United Nations mechanisms and procedures in the field of human rights, and encourages the Special Rapporteur to continue his efforts in this regard;

3. Welcomes the observations contained in the report of the Special Rapporteur on the methods of work, in particular on the means of responding effectively to information which comes before him;

4. Requests the Secretary-General to provide, within existing overall United Nations resources, all the assistance necessary to the Special Rapporteur to fulfil his mandate, in particular by strengthening the human and material resources placed at his disposal;

5. Also requests the Secretary-General to consider ways of publicizing, particularly within the framework of the information activities of the Centre for Human Rights, the work of the Special Rapporteur, as well as recommendations made by him;

6. Expresses its concern at the extensive occurrence of detention of, as well as discrimination, threats and acts of violence and harassment, including persecution and intimidation, directed at persons who exercise the right to freedom of opinion and expression as affirmed in the Universal Declaration of Human Rights and, where applicable, the International Covenant on Civil and Political Rights;

7. Also expresses its concern at the extensive occurrence of detention of, as well as discrimination, threats and acts of violence and harassment, including persecution and intimidation, directed at persons who exercise the intrinsically linked rights to freedom of thought, conscience and religion, of peaceful assembly and freedom of association, and the right to take part in the conduct of public affairs as affirmed in the Universal Declaration of Human Rights and, where applicable, the International Covenant on Civil and Political Rights;

8. Further expresses its concern at the extensive occurrence in many parts of the world of detention of, as well as discrimination, threats and acts of violence and harassment, including persecution and intimidation, directed at persons who seek to promote and defend these rights and freedoms;

9. Emphasizes that professionals in the field of information play a major role in the promotion and protection of freedom of opinion and expression and expresses in this regard its deep concern at the numerous reports, received by the Special Rapporteur, of detention of, as well as discrimination, threats and acts of violence and harassment, including persecution and intimidation, directed

at such professionals, including journalists, editors, writers and authors, publishers and printers;

10. Expresses its concern at the number of cases of arbitrary detention ordered following the exercise of rights protected by article 19 of the International Covenant on Civil and Political Rights concerning the right to freedom of opinion and expression as noted in the third report of the Working Group on Arbitrary Detention (E/CN.4/1994/27);

11. Welcomes the release of persons detained for exercising these rights and freedoms, and encourages further progress in this regard;

12. Appeals to all States to ensure respect and support for the rights of all persons who exercise the right to freedom of opinion and expression, the rights to freedom of thought, conscience and religion, peaceful assembly and association, and the right to take part in the conduct of public affairs, or who seek to promote and defend these rights and freedoms and, where any persons have been detained, subjected to violence or threats of violence and to harassment, including persecution and intimidation, solely for exercising these rights as laid down in the Universal Declaration of Human Rights and, where applicable, the International Covenant on Civil and Political Rights, to take the appropriate steps to ensure the immediate cessation of these acts and to create conditions under which these acts may be less liable to occur;

13. Also appeals to all States to ensure that persons seeking to exercise these rights and freedoms are not discriminated against, particularly in such areas as employment, housing and social services;

14. Invites once again the Working Group on Enforced or Involuntary Disappearances, the Working Group on Arbitrary Detention and the special rapporteurs of the Commission on Human Rights to pay attention, within the framework of their mandates, to the situation of persons detained, subjected to violence, ill-treated or discriminated against for having exercised the right to freedom of opinion and expression as affirmed in the Universal Declaration of Human Rights and, where applicable, the International Covenant on Civil and Political Rights;

15. Urges all Governments to cooperate with and assist the Special Rapporteur in the performance of his tasks and to provide all information requested;

16. Requests the Special Rapporteur to submit to the Commission at its fifty-first session a report covering the activities relating to his mandate;

17. Decides to review this matter at its fifty-first session.

55th meeting
4 March 1994
[Adopted without a vote.]

1994/34. Human rights in the administration of justice

The Commission on Human Rights,

Guided by the principles embodied in articles 3, 5, 9, 10 and 11 of the Universal Declaration of Human Rights, as well as the relevant provisions of the International Covenant on Civil and Political Rights and its Optional Protocols,

Guided also by the relevant principles embodied in the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, in the International Convention on the Elimination of All Forms of Racial Discrimination and in the Convention on the Elimination of All Forms of Discrimination against Women,

Reaffirming the opportunity offered to States parties to the International Covenant on Civil and Political Rights, if they so wish, to become parties to its Optional Protocols,

Welcoming the important work of the Sub-Commission on Prevention of Discrimination and Protection of Minorities in the field of human rights in the administration of justice, in particular regarding the independence of the judiciary, the independence of judges and lawyers, the right to a fair trial, habeas corpus, human rights and states of emergency, the question of arbitrary detention, the human rights of juveniles in detention, the privatization of prisons and the question of the impunity of perpetrators of violations of human rights,

Emphasizing the importance of properly coordinating the activities carried out by the Commission on Crime Prevention and Criminal Justice with the

activities under the responsibility of the Commission on Human Rights in this field,

Guided by General Assembly resolution 48/137 of 20 December 1993,

Welcoming the work accomplished in this field by the United Nations within the framework of its programme of work in crime prevention and criminal justice,

Welcoming also resolution 1993/39 of 26 August 1993 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, entitled "Independence of the judiciary",

Recognizing the central role of the administration of justice in the promotion and protection of human rights,

Mindful of the relevant recommendations relating to human rights in the administration of justice contained in the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, held at Vienna from 14 to 25 June 1993, in particular part I, paragraph 27 and part II, paragraph 69,

Discomforted by the reports of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment (E/CN.4/1994/31), of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1994/26 and Add.1) and of the Working Group on Arbitrary Detention (E/CN.4/1994/27), all reflecting continuing human rights violations in circumstances clearly indicating pertinent and widespread deficiencies in the systems of administration of justice,

Welcoming the important work of the Commission on Crime Prevention and Criminal Justice in the field of human rights in the administration of justice, as reflected in Economic and Social Council resolution 1993/34 of 27 July 1993, section III,

Noting that many human rights violations in the administration of justice are specifically or primarily directed against women and that the identification and reporting of these violations demand special vigilance,

Recalling its resolution 1993/41 of 5 March 1993,

1. Reaffirms the importance of the implementation of relevant United Nations standards on human rights in the administration of justice;

2. Reiterates once again its call to all Member States to spare no effort in providing for effective legislative and other mechanisms and procedures, as

well as adequate resources, to ensure more effective implementation of these standards, taking into account the recommendations of the General Assembly in its resolution 43/153 of 8 December 1988 for the development of national strategies for this purpose;

3. Recognizes the important role that non-governmental organizations, including professional associations of lawyers and judges, can play in promoting human rights in the administration of justice;

4. Calls upon Member States to intensify efforts to identify discrimination and other human rights violations in the administration of justice that are specifically or primarily directed against women, and to provide for effective measures to remedy such violations;

5. Welcomes the special attention given to questions relating to the effective protection of human rights in the administration of justice by special rapporteurs and working groups in their recent reports, and calls upon them to continue to provide, wherever appropriate, specific recommendations in this regard, including proposals for concrete measures under the United Nations programme of advisory services and technical assistance in the field of human rights;

6. Stresses the desirability of States being provided, at their request, with continued assistance in the field of administration of justice, in particular under the United Nations programme of advisory services and technical assistance;

7. Urges the Secretary-General to consider favourably requests for assistance by States in the field of the administration of justice, within the framework of the United Nations programme of advisory services and technical assistance, and to strengthen coordination activities in this field;

8. Strongly recommends, in this context, that the establishment of a comprehensive programme within the system of advisory services and technical assistance be considered in order to help States in the task of building and strengthening adequate national structures which have a direct impact on the overall observance of human rights and the maintenance of the rule of law;

9. Invites the Commission on Crime Prevention and Criminal Justice to pay particular attention to questions relating to the administration of justice and

to explore ways and means of strengthening its cooperation with the Commission on Human Rights in this field, with special emphasis on the effective implementation of relevant norms and standards and the provision of technical assistance;

10. Draws the attention of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders to the issues raised in the present resolution;

11. Decides to consider the question at its fifty-first session under the agenda item entitled, "Question of the human rights of all persons subjected to any form of detention or imprisonment".

55th meeting
4 March 1994
[Adopted without a vote.]

1994/35. Right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms

The Commission on Human Rights,

Guided by the principles embodied in the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights and other relevant instruments in the field of human rights and humanitarian law,

Reaffirming that, pursuant to internationally proclaimed human rights and humanitarian law principles, victims of gross violations of human rights should receive, in appropriate cases, restitution, compensation and rehabilitation,

Considering that the question of restitution, compensation and rehabilitation for victims of gross violations of human rights has received insufficient attention and should be addressed more consistently and more thoroughly at international and national levels,

Welcoming in this regard the study on this subject prepared by the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Mr. Theo van Boven, and contained in his final report (E/CN.4/Sub.2/1993/8),

Noting with particular interest the conclusions and recommendations, as well as the proposed basic principles and guidelines contained in sections VIII and IX of the final report,

1. Expresses its appreciation for the commendable work carried out by the Special Rapporteur;

2. Requests the Secretary-General to take the necessary measures, within existing resources, for the printing, publication and dissemination of the study of the Special Rapporteur;

3. Expresses the hope that priority attention will be given to the question of restitution, compensation and rehabilitation for victims of gross violations of human rights and regards the proposed basic principles and guidelines contained in the study of the Special Rapporteur a useful basis for this purpose;

4. Recommends, therefore, to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in conformity with Sub-Commission resolution 1993/29 of 25 August 1993, to take measures to examine the proposed basic principles and guidelines with a view to making proposals thereon and to report to the Commission.

55th meeting
4 March 1994
[Adopted without a vote.]

1994/36. United Nations Voluntary Fund for Victims of Torture

The Commission on Human Rights,

Recalling article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, which state that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Recalling also General Assembly resolution 36/151 of 16 December 1981, in which the Assembly noted with deep concern that acts of torture took place in various countries, recognized the need to provide assistance to the victims in a purely humanitarian spirit and established the United Nations Voluntary Fund for Victims of Torture, and Assembly resolution 47/109 of 16 December 1992,

Reaffirming the importance of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Bearing in mind its resolution 1993/38 of 5 March 1993,

Welcoming the recommendation contained in the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, that providing necessary resources for assistance to victims of torture should be given high priority, inter alia by additional contributions to the United Nations Voluntary Fund for Victims of Torture,

Convinced that the struggle to eliminate torture includes the provision of assistance in a humanitarian spirit to victims of torture and their families,

Taking note of the information provided by the Secretary-General on the activities of the United Nations Voluntary Fund for Victims of Torture (A/48/520, E/CN.4/1994/29 and Add.1),

Taking note also of the actions taken by the Secretary-General, through the staff of the Centre for Human Rights, to assist the Board of Trustees of the Fund in its efforts to increase public awareness of the Fund and its humanitarian work,

Recalling the statement by the Board of Trustees of the Fund on the need to receive contributions from Governments on a regular basis, which, inter alia, would prevent the interruption of programmes in the continuation of which the Fund plays an instrumental role,

Taking account of the fund-raising campaign launched on the recommendation of the Board of Trustees at its eleventh session, held from 22 April to 1 May 1992, to enhance the capacity of the Fund to respond more favourably to the increasing number of requests for assistance to victims of torture,

Taking account also of the increasing number of projects and the repeated requests by the Board of Trustees of the Fund to have adequate staff for the operations of the Fund,

Noting with satisfaction the establishment of an international network of centres for the rehabilitation of torture victims, which plays an important role in providing assistance to victims of torture, and the collaboration of the Fund with these centres,

1. Expresses its appreciation to the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture for the work it has accomplished;

2. Expresses its gratitude and appreciation to those Governments, organizations and individuals that have already contributed to the Fund;

3. Appeals to all Governments, organizations and individuals in a position to do so to respond favourably to requests for contributions to the Fund, if possible, on a regular basis and annually before the meeting of the Board of Trustees;

4. Renews its request to the Secretary-General to transmit to all Governments the appeals of the Commission for contributions to the Fund;

5. Requests the Secretary-General to ensure, within the overall budgetary framework of the United Nations, the provision of adequate staff and technical equipment for the operations of the Fund;

6. Also requests the Secretary-General to continue to keep the Commission informed of the operations of the Fund on an annual basis.

55th meeting
4 March 1994
[Adopted without a vote.]

1994/37. Torture and other cruel, inhuman or degrading treatment or punishment

The Commission on Human Rights,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Recalling the Declaration on the Protection of All Persons from Being Subjected to Torture or Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly in its resolution 3452 (XXX) of 9 December 1975,

Recalling also the World Conference on Human Rights and its Vienna Declaration and Programme of Action, in particular part I, paragraph 30, in which the World Conference stated that, inter alia, torture and other cruel, inhuman and degrading treatment or punishment constituted serious obstacles to the full enjoyment of all human rights,

Recalling further part II.B.5 of the Vienna Declaration and Programme of Action concerning the eradication of torture,

Noting with appreciation that the number of States which have become parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is steadily increasing,

Welcoming the establishment at the regional level, in accordance with the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,

Seriously concerned, however, about the persistence of an alarming number of reported cases of torture and other cruel, inhuman or degrading treatment or punishment taking place in various parts of the world,

Recalling its resolution 1985/33 of 13 March 1985, in which it decided to appoint for one year a special rapporteur to examine questions relevant to torture, and all its subsequent resolutions in which that mandate was regularly extended, most recently for another three years in resolution 1992/32 of 28 February 1992, while maintaining the annual reporting cycle,

Noting with regret that in the past year the Special Rapporteur has not been able to visit any country in order to fulfil his mandate,

Welcoming a continuing exchange of views between the Special Rapporteur and the Committee against Torture, established under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Working Group on Arbitrary Detention, and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as well as contacts with the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture,

Aware that torture constitutes a criminal obliteration of the human personality which can never be justified under any circumstances, by any ideology or by any overriding interest, and convinced that a society that tolerates torture can never claim to respect human rights,

Determined to promote the full implementation of the prohibition under international and national law of the practice of torture and other cruel, inhuman or degrading treatment or punishment,

Convinced that efforts to eradicate torture should first and foremost be concentrated on prevention,

Noting, in this regard, the importance of the provision of advisory services and technical assistance as forms of practical assistance to interested States with a view to enabling them to develop the necessary infrastructure to meet international human rights standards,

Recalling the Standard Minimum Rules for the Treatment of Prisoners, approved by the Economic and Social Council in its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, the Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment, adopted by the General Assembly in its resolution 37/194 of 18 December 1982, and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly in its resolution 40/34 of 29 November 1985,

Recalling also the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, approved by the General Assembly in its resolution 43/173 of 9 December 1988,

Recalling further the conclusions and recommendations of the previous Special Rapporteur underlined in its resolutions 1987/29 of 10 March 1987, 1988/32 of 8 March 1988, 1989/33 of 6 March 1989, 1990/34 of 2 March 1990, 1991/38 of 5 March 1991, 1992/32 of 28 February 1992 and 1993/40 of 5 March 1993,

1. Commends the Special Rapporteur on his report (E/CN.4/1994/31);

2 Urges all Governments to promote the speedy and full implementation of the Vienna Declaration and Programme of Action, in particular of the section relating to freedom from torture;

3. Stresses the recommendations of the previous Special Rapporteur, commended by the present Special Rapporteur for serious action by Governments, and in particular:

(a) Concerning the importance of instituting a system of periodic visits by independent experts to places of detention as a highly effective preventive measure against the occurrence of torture;

(b) That the judiciary should play an active role in guaranteeing to detainees the rights they have in accordance with international and national standards;

(c) That the right to have access to a lawyer is one of the basic rights of a person who is deprived of his liberty and that restrictions on this right should therefore be exceptional and always subject to judicial control;

(d) That each person should have the right to initiate promptly after his arrest proceedings before a court on the lawfulness of his detention, in conformity with the International Covenant on Civil and Political Rights;

(e) That interrogation of detainees should take place only at official interrogation centres, that each interrogation should be duly recorded and start with the identification of all the persons present and that the blindfolding or hooding of detainees during interrogation should be absolutely forbidden;

(f) Pertaining to the establishment at the national level of an independent authority able to receive complaints by individuals about torture or other severe maltreatment;

4. Recalls that incommunicado detention is highly conducive to torture and that in the Special Rapporteur's view incommunicado detention should be forbidden;

5. Invites the Special Rapporteur to examine questions concerning torture directed disproportionately or primarily against women and conditions conducive to such torture, and to make appropriate recommendations concerning prevention of gender-specific forms of torture;

6. Recalls the recommendation of the previous Special Rapporteur that Governments and professional and medical associations should take strict measures against members of the medical profession who play a role in the practice of torture;

7. Endorses the recommendation of the previous Special Rapporteur that those who violate article 7 of the International Covenant on Civil and Political Rights, whether by encouraging, ordering, tolerating or perpetrating prohibited acts, must be held responsible, and that whenever a complaint of torture is found to be justified, the perpetrators should be severely punished, especially the official in charge of the place of detention where the torture is found to have taken place;

8. Calls upon all States that have not yet done so to become as soon as possible parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and requests the Special Rapporteur to continue to promote universal accession to that Convention and to encourage all States to fulfil its provisions strictly;

9. Emphasizes the importance of training programmes for law enforcement and security personnel, and draws the attention of interested Governments to the possibilities offered in this connection by the United Nations programme of advisory services in the field of human rights;

10. Encourages the Special Rapporteur to make appropriate recommendations concerning situations in which advisory services to judicial, law enforcement, detention and other authorities might assist interested Governments in combating the occurrence of torture;

11. Urges the Secretary-General to make available, as part of the United Nations programme of advisory services in the field of human rights, qualified experts in law enforcement, detention and medicine to assist Governments, at their request, in their efforts to prevent the occurrence of torture;

12. Decides that the Special Rapporteur, in carrying out his mandate, shall continue to seek and receive credible and reliable information from Governments, the specialized agencies and intergovernmental and non-governmental organizations;

13. Approves the methods of work employed by the Special Rapporteur, in particular as regards urgent appeals;

14. Considers it desirable that the Special Rapporteur should continue to have a further exchange of views with the various mechanisms and bodies entrusted with the task of combating torture, in particular with a view to enhancing further their effectiveness and mutual cooperation, and that he should pursue cooperation with relevant United Nations programmes notably that on crime prevention and criminal justice;

15. Invites the Special Rapporteur, in carrying out his mandate, to bear in mind the need to be able to respond effectively to credible and reliable information that comes before him and to carry out his work with discretion;

16. Appeals to all Governments to cooperate with and assist the Special Rapporteur in the performance of his tasks and to supply all information requested, including by reacting properly to his urgent appeals;

17. Urges those Governments that have not yet responded to communications transmitted to them by the Special Rapporteur to answer expeditiously;

18. Encourages Governments to give serious consideration to inviting the Special Rapporteur to visit their countries so as to enable him to fulfil his mandate even more effectively;

19. Calls upon the Special Rapporteur to continue to include information in his report on the follow-up by Governments to his recommendations, visits and communications;

20. Requests the Secretary-General to provide all necessary assistance to the Special Rapporteur to cover all of his activities in order to enable him to submit his report to the Commission at its fifty-first session.

55th meeting
4 March 1994
[Adopted without a vote.]

1994/38. Status of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

The Commission on Human Rights,

Recalling article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Recalling also the Declaration on the Protection of all Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly in its resolution 3452 (XXX) of 9 December 1975,

Recalling further General Assembly resolution 39/46 of 10 December 1984, in which the Assembly adopted and opened for signature, ratification and accession the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and called upon all Governments to consider signing and ratifying the Convention as a matter of priority,

Bearing in mind its resolution 1993/37 of 5 March 1993,

Welcoming the statement on freedom from torture included in the Vienna Declaration and Programme of Action, in which the World Conference on Human Rights urged all States to put an immediate end to the practice of torture and eradicate this evil forever,

Recalling the decision of 9 September 1992 of the States parties to the Convention to delete paragraph 7 of article 17 and paragraph 5 of article 18 of the Convention and to add a new paragraph as paragraph 4 of article 18, stating that the members of the Committee established under the Convention shall henceforth receive emoluments from United Nations resources on such terms as the General Assembly will decide,

Welcoming the endorsement of these amendments by the General Assembly in its resolution 47/111,

Mindful of the relevance, for the eradication of torture and other cruel, inhuman or degrading treatment or punishment, of the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169, annex) and of the Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment (General Assembly resolution 37/194, annex), as well as of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (General Assembly resolution 43/173, annex),

Seriously concerned about the alarming number of cases of torture and other cruel, inhuman or degrading treatment or punishment which continue to be reported from various parts of the world,

Determined to promote full implementation of the prohibition, under international and national law, of the practice of torture and other cruel, inhuman or degrading treatment or punishment,

Considering the important functions of the Committee against Torture under the Convention,

Recalling that in its resolution 1985/33 of 13 March 1985, the Commission decided to appoint a special rapporteur to examine questions relevant to torture and also recalling its subsequent decisions to continue his mandate,

Taking note of the outcome of the second session of the open-ended working group of the Commission on Human Rights on the elaboration of a draft optional protocol to the Convention,

1. Welcomes the report of the Committee against Torture on its ninth and tenth sessions (A/48/44 and Add.1);

2. Takes note of the report of the Secretary-General (E/CN.4/1994/28) on the status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

3. Encourages the States parties to notify the Secretary-General of their acceptance of the amendments to articles 17 and 18 of the Convention as soon as possible;

4. Urges States parties that have not yet paid their assessed contributions, and in particular those whose arrears pertain to two or more consecutive financial periods, to fulfil their obligations forthwith;

5. Welcomes the attention that the Committee against Torture has given to the development of an effective system of reporting on the implementation of the Convention by States parties, including its practice of formulating concluding observations after the consideration of such reports, as well as its practice of carrying out inquiries into cases of well-founded allegations of the systematic practice of torture in States parties;

6. Requests the Secretary-General to ensure the provision of appropriate staff and facilities for the effective performance of the functions of the Committee against Torture;

7. Urges all States to become parties to the Convention as a matter of priority;

8. Invites all States ratifying or acceding to the Convention and those States parties that have not yet done so to make the declaration provided for in articles 21 and 22 of the Convention and to consider the possibility of withdrawing their reservations to article 20,

9. Requests the Secretary-General to continue to submit to the Commission annual reports on the status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

10. Decides to consider the report of the Secretary-General at its fifty-first session under the agenda sub-item entitled "Status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment".

55th meeting
4 March 1994
[Adopted without a vote.]

1994/39. Question of enforced disappearances

The Commission on Human Rights,

Bearing in mind General Assembly resolution 33/173 of 20 December 1978, in which the Assembly requested the Commission on Human Rights to consider the question of disappeared persons with a view to making appropriate recommendations, and all other United Nations resolutions concerning missing or disappeared persons,

Recalling its resolution 20 (XXXVI) of 29 February 1980, in which it decided to establish a working group consisting of five of its members, to serve as experts in their individual capacity, to examine questions relevant to enforced or involuntary disappearances, and its resolutions 1991/41 of 5 March 1991, 1992/30 of 28 February 1992 and 1993/35 of 5 March 1993,

Recalling also General Assembly resolution 47/133 of 18 December 1992, by which the General Assembly adopted the Declaration on the Protection of All Persons from Enforced Disappearance,

Emphasizing that, in the Vienna Declaration and Programme of Action, the World Conference on Human Rights, welcomes the adoption of the Declaration on the Protection of All Persons from Enforced Disappearance and calls upon all States to take effective legislative, administrative, judicial or other measures to prevent, terminate and punish acts of enforced disappearances,

Noting that the Working Group on Enforced or Involuntary Disappearances considers the adoption of the latter Declaration to be the most encouraging development since its establishment in respect of efforts to combat enforced disappearances, especially in so far as it recognizes that the systematic practice of such acts "is of the nature of a crime against humanity",

Expressing concern in this connection that, according to the Working Group, the practice of a number of States can run counter to the Declaration,

Convinced of the need to continue implementing the provisions of General Assembly resolution 33/173 and of the other United Nations resolutions on the question of disappeared persons, with a view to finding solutions for cases of disappearance and eliminating enforced disappearances, duly taking into account the provisions of the Declaration,

Noting General Assembly resolution 47/132 of 18 December 1992,

Deeply concerned at the persistence of the practice of enforced disappearances in various parts of the world,

Concerned at the large number of reports concerning harassment, ill-treatment and intimidation of witnesses of disappearances or relatives of disappeared persons,

Recalling in this connection its resolution 1993/64 of 10 March 1993 on cooperation with representatives of United Nations human rights bodies,

Noting with satisfaction in this connection that the Working Group reports increased cooperation on the part of most States,

Emphasizing the relevance of its resolution 1993/33 of 5 March 1993 on forensic science to the activities of the Working Group and noting with appreciation the compilation by the Secretary-General of a preliminary list of experts in this field,

Having considered the report of the Working Group (E/CN.4/1994/26 and Add.1),

1. Expresses its appreciation to the Working Group on Enforced or Involuntary Disappearances for the way in which it is performing its task, and thanks it for submitting a report to the Commission in accordance with resolution 1993/35;

2. Takes notes of the report of the Working Group;

3. Requests the Working Group, in its efforts to help to eliminate the practice of enforced disappearances, to submit to the Commission all information it deems necessary and any specific recommendation it may wish to make regarding the fulfilment of its task;

4. Reminds the Working Group of the need to observe, in its humanitarian task, United Nations standards and practices regarding the handling of communications and the consideration of Government replies;

5. Invites all Governments to take appropriate legislative or other steps to prevent and punish the practice of enforced disappearances, with special reference to the Declaration on the Protection of All Persons from Enforced Disappearance, and to take action to that end nationally and regionally and in cooperation with the United Nations;

6. Recalls in this regard that all acts of enforced disappearance are offences punishable by appropriate penalties which take into account their extreme seriousness under criminal law;

7. Notes with concern that, as the Working Group stresses in its report (para. 539), some Governments have never provided substantive replies concerning enforced disappearances alleged to have occurred in their countries;

8. Deplores the fact that, as the Working Group points out in its report, some Governments have not acted on the recommendations concerning them made in the reports of the Working Group, and requests the Working Group to continue to submit to the Commission information on the follow-up to its recommendations;

9. Urges the Governments concerned, particularly those which have not yet responded to communications transmitted to them by the Working Group, to cooperate with and assist the Working Group so that it may carry out its mandate effectively, and in particular to reply expeditiously to its requests for information;

10. Also urges the Governments concerned to intensify their cooperation with the Working Group on any action taken pursuant to recommendations addressed to them by the Working Group;

11. Once again urges Governments to take steps to protect the families of disappeared persons against any intimidation or ill-treatment to which they might be subjected;

12. Encourages Governments to give serious consideration to inviting the Working Group to visit their countries so as to enable the Working Group to fulfil its mandate even more effectively;

13. Urges Governments to take steps to ensure that, when a state of emergency is introduced, the protection of human rights is guaranteed, particularly as regards the prevention of enforced disappearances;

14. Reminds Governments of the need to ensure that their competent authorities conduct prompt and impartial inquiries in all circumstances whenever there is reason to believe that an enforced disappearance has occurred in a territory under their jurisdiction;

15. Further recalls that, if allegations are confirmed, perpetrators should be prosecuted;

16. Expresses its profound thanks to the many Governments that have cooperated with the Working Group and replied to its requests for information, and to the Governments that have invited the Working Group to visit their countries, asks them to give all necessary attention to the Working Group's recommendations, and invites them to inform the Working Group of any action they take on those recommendations;

17. Requests the Working Group, in the exercise of its mandate, to take into account the provisions of the Declaration on the Protection of All Persons from Enforced Disappearance, and to modify its working methods if necessary;

18. Invites the Working Group to identify obstacles to the realization of the provisions of the Declaration and to recommend ways of overcoming those obstacles, taking into account the discussions of the Sub-Commission on Prevention of Discrimination and Protection of Minorities;

19. Encourages States, as some have already done, to provide concrete information on measures taken to give effect to the Declaration, as well as obstacles encountered;

20. Invites the Working Group to continue to consider the question of impunity, in close collaboration with the rapporteurs appointed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities and with due regard for the relevant provisions of the Declaration;

21. Takes note, in this connection, of the first determining elements identified by the Working Group, inter alia habeas corpus or a similar procedure, the proper functioning of justice, the protection of persons involved in any way in the investigation from any kind of reprisals, the initiation of inquiries and their continuation pending clarification of the victims' fate, and the trial by civilian courts of alleged perpetrators, who should not benefit from any special

amnesty law or other similar measures having the effect of exonerating them from any prosecution or penal sanction;

22. Requests the Working Group to pay attention to cases of children subjected to enforced disappearance and children of disappeared persons and to cooperate closely with the Governments concerned to search for and identify these children;

23. Takes note with interest of the proposal of the Working Group to establish a special procedure concerning the question of enforced disappearances in the territory of the former Yugoslavia under the joint responsibility of one member of the Working Group and the Special Rapporteur on human rights in the former Yugoslavia;

24. Requests the Working Group to report on its work to the Commission at its fifty-first session and to continue to discharge its mandate discreetly and conscientiously;

25. Requests the Secretary-General to ensure that the Working Group really receives all necessary assistance, in particular the staff and resources it requires to perform its functions, especially in carrying out missions, following them up or holding sessions in countries that would be prepared to receive it;

26. Also requests the Secretary-General to keep the Working Group and the Commission on Human Rights regularly informed of the steps he takes to secure the widespread dissemination and promotion of the Declaration on the Protection of All Persons from Enforced Disappearance.

55th meeting
4 March 1994
[Adopted without a vote.]

1993/40. Question of a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The Commission on Human Rights,

Recalling its decision 1991/107 of 5 March 1991, in which it decided to consider at its forty-eighth session the text, proposed by the Government of Costa Rica, of a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (E/CN.4/1991/66), intended to establish a preventive system of visits to places of detention,

Recalling also its resolution 1992/43 of 3 March 1992, in which it established an open-ended working group to elaborate a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, using as a basis for its discussions the draft text proposed by the Government of Costa Rica, and decided to consider the question at its forty-ninth session,

Recalling further Economic and Social Council resolution 1992/6 of 20 July 1992, in which the Council authorized an open-ended working group to meet for a period of two weeks prior to the forty-ninth session of the Commission,

Recalling its resolution 1993/34 of 5 March 1993, in which it requested the working group to meet for a period of two weeks prior to the fiftieth session of the Commission in order to continue its work and to submit a report,

Taking note with satisfaction, of the observations and comments presented by Governments, United Nations bodies, the representative of the Committee against Torture, the Special Rapporteur on the question of torture, the representative of the European Committee for the Prevention of Torture, the head of the Division of Detention of the International Committee of the Red Cross, other invited experts and non-governmental organizations, whose contributions led to useful progress in the examination of the draft optional protocol,

Considering that the working group generally agreed that should its work continue in the same manner there was a possibility that, within a reasonable period of time, a final text could be elaborated which could be of great significance in the field of the prevention of torture,

Recalling the firm declaration of the World Conference on Human Rights that efforts to eradicate torture should, first and foremost, be concentrated on prevention and which called for the early adoption of an optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which is intended to establish a preventive system of regular visits to places of detention,

1. Takes note of the report of the working group on the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (E/CN.4/1994/25 and Add.1) and welcomes the substantial progress made by the working group during its second session;

2. Requests the open-ended working group to meet between sessions for a period of two weeks prior to the fifty-first session of the Commission in order to pursue its work and to submit a new report to the Commission;

3. Requests the Secretary-General to transmit the report of the working group to Governments, the specialized agencies, the chairpersons of the human rights treaty bodies and the intergovernmental and non-governmental organizations concerned, and to invite them to submit their comments to the working group;

4. Also requests the Secretary-General to invite Governments, the specialized agencies, and non-governmental organizations, as well as the Chairperson of the Committee against Torture and the Special Rapporteur on the question of torture, to participate in the activities of the working group;

5. Further requests the Secretary-General to extend all the necessary facilities to the working group for its meetings prior to the fifty-first session of the Commission;

6. Decides to examine the report of the working group at its fifty-first session under the sub-item entitled "Question of a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" under the agenda item entitled "Question of the human rights of all persons subjected to any form of detention or imprisonment";

7. Recommends the following draft resolution to the Economic and Social Council for adoption:

"The Economic and Social Council

Recalling Commission on Human Rights resolution 1994/40 of 4 March 1994,

1. Authorizes an open-ended working group of the Commission on Human Rights to meet for a period of two weeks prior to the fifty-first session of the Commission in order to continue the elaboration of a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

2. Requests the Secretary-General to extend to the working group all the necessary facilities for its meetings and to transmit the report of the working group (E/CN.4/1994/25 and Add.1) to Governments, the specialized

agencies, the chairpersons of the human rights treaty bodies and the intergovernmental and non-governmental organizations concerned."

55th meeting
4 March 1994
[Adopted without a vote.]

1994/41. Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers

The Commission on Human Rights,

Guided by articles 7, 8, 10 and 11 of the Universal Declaration of Human Rights and articles 2, 4 and 26 of the International Covenant on Civil and Political Rights,

Convinced that an independent and impartial judiciary and an independent legal profession are essential prerequisites for the protection of human rights and for ensuring that there is no discrimination in the administration of justice,

Bearing in mind the Vienna Declaration and Programme of Action (A/CONF.157/23), in particular paragraph 27 of part I and paragraphs 88, 90 and 95 of part II,

Recalling its resolutions 1989/32 of 6 March 1989, 1990/33 of 2 March 1990, 1991/39 of 5 March 1991, 1992/33 of 28 February 1992 and 1993/44 of 5 March 1993,

Recalling also General Assembly resolution 45/166 of 18 December 1990, in which the Assembly welcomed the Basic Principles on the Role of Lawyers and the Guidelines on the Role of Prosecutors adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and invited Governments to respect them and to take them into account within the framework of their national legislation and practice,

Bearing in mind the principles contained in the draft Declaration on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers (E/CN.4/Sub.2/1988/20/Add.1 and Add.1/Corr.1), prepared by Mr. L.M. Singhvi, the importance of which was noted by the Commission on Human Rights, in its resolution 1989/32 of 6 March 1989,

Noting both the increasing frequency of attacks on the independence of judges, lawyers and court officials and the link which exists between the

weakening of safeguards for the judiciary and lawyers and the gravity and frequency of violations of human rights,

1. Welcomes the final report on the independence of the judiciary and the protection of practising lawyers (E/CN.4/Sub.2/1993/25 and Add.1), prepared by Mr. Louis Joinet, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities;

2. Endorses the recommendation of the Sub-Commission, as contained in its resolution 1993/39 of 26 August 1993, to create a monitoring mechanism to follow up the question of the independence and impartiality of the judiciary, particularly with regard to judges and lawyers, as well as court officials, and the nature of potential threats to this independence and impartiality;

3. Requests the Chairman of the Commission to appoint, for a period of three years, after consultation with the other members of the Bureau, a special rapporteur whose mandate will consist of the following tasks:

(a) To inquire into any substantial allegations transmitted to him or her and report his or her conclusions thereon;

(b) To identify and record not only attacks on the independence of the judiciary, lawyers and court officials but also progress achieved in protecting and enhancing their independence, and make concrete recommendations including the provision of advisory services or technical assistance when they are requested by the State concerned;

(c) To study, for the purpose of making proposals, important and topical questions of principle with a view to protecting and enhancing the independence of the judiciary and lawyers;

4. Urges all Governments to assist the Special Rapporteur in the discharge of his or her mandate and to transmit to him or her all the information requested;

5. Requests the Special Rapporteur, starting with the fifty-first session, to submit a report on the activities connected with his or her mandate;

6. Requests the Secretary-General, within the limits of the resources of the United Nations, to provide the Special Rapporteur with any assistance needed for the discharge of his or her mandate;

7. Decides to consider this question at its fifty-first session;

8. Recommends the following draft decision to the Economic and Social Council for adoption:

"The Economic and Social Council,

Taking note of Commission on Human Rights resolution 1994/41 of 4 March 1994, endorses the decision of the Commission to confirm the proposal of the Sub-Commission to create a monitoring mechanism to follow up the question of the independence and impartiality of the judiciary, particularly with regard to judges and lawyers, as well as court officials, and the nature of problems liable to attack this independence and impartiality, and recommends that this take the form of a special rapporteur whose mandate will consist of the following tasks:

(a) To inquire into any substantial allegations transmitted to him or her and report his or her conclusions thereon;

(b) To identify and record not only attacks on the independence of the judiciary, lawyers and court officials but also progress achieved in protecting and enhancing their independence, and make concrete recommendations including the provision of advisory services or technical assistance when they are requested by the State concerned;

(c) To study, for the purpose of making proposals, important and topical questions of principle with a view to protecting and enhancing the independence of the judiciary and lawyers;

The Council also approves the request of the Commission to the Secretary-General to provide the Special Rapporteur with all the assistance necessary for the completion of his or her task."

55th meeting
4 March 1994
[Adopted without a vote.]

1994/42. Staff members of the United Nations and of the specialized agencies in detention

The Commission of Human Rights,

Recalling General Assembly resolutions 42/219 of 21 December 1987, 43/225 of 21 December 1988, 44/186 of 19 December 1989, 45/240 of 21 December 1990, in which the Assembly deplored the increase in the number of cases where the

functioning, safety and well-being of officials had been adversely affected, including cases of detention in Member States and abduction by armed groups and individuals, and the increasing number of cases in which the lives and well-being of officials had been placed in jeopardy during the exercise of their official functions,

Recalling its resolution 1993/39 of 5 March 1993, in which it requested the Secretary-General to submit to the Commission at its fiftieth session an updated version of the report on the situation of United Nations staff members, experts and their families detained, imprisoned, missing or held in a country against their will,

Aware of the need to update and strengthen the relevant international legal instruments, and taking note of the decision of the General Assembly, contained in its resolution 48/37 of 9 December 1993, to establish an ad hoc committee to elaborate an international convention dealing with the safety and security of United Nations and associated personnel, with particular reference to responsibility for attacks on such personnel,

Considering that at a time when the United Nations is undertaking greater responsibilities sending missions in difficult conditions to various parts of the world, it is imperative that its staff members and other personnel acting under its authority be able to perform their duties with the assurance that their human rights, privileges and immunities will be fully respected, in accordance with the relevant provisions of the Charter of the United Nations and other international instruments,

Gravely concerned that a significant number of United Nation staff members, experts and their families continue to be detained, imprisoned, missing or held in a country against their will,

Gravely concerned also that a significant number of United Nations staff members, recruited nationally or internationally, and other personnel acting under the authority of the United Nations and their families have been killed since January 1993,

Noting the need for updated and complete information on the situation of United Nations staff members, experts and their families detained, imprisoned, missing or held in a country against their will,

Convinced that a better coordinated and more detailed reporting system, with a better dialogue between the United Nations and the host country, may contribute to a faster solution of cases,

Preoccupied by the inordinate delays and obstacles which different organizations of the United Nations system face when trying to exercise fully the right of functional protection of their staff members,

Greatly appreciating the efforts of the Secretary-General to promote a satisfactory resolution of all cases of this kind, and noting that these efforts have already produced concrete results concerning the security of United Nations staff members, experts and their families,

Having examined the updated report by the Secretary-General on detention of international civil servants and their families (E/CN.4/1994/30 and Corr.1);

1. Takes note with interest of the updated report of the Secretary-General;

2. Again requests the Secretary-General to take steps aimed at ensuring the application without delay of all the recommendations contained in the final report of the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on the protection of the human rights of United Nations staff members, experts and their families (E/CN.4/Sub.2/1992/19);

3. Appeals once again to Member States to respect and to ensure respect for the rights of staff members and other personnel acting under the authority of the United Nations and their families and to take the necessary measures to ensure the protection of United Nations and associated personnel in their territory;

4. Requests the Secretary-General to continue his efforts to ensure that the human rights, privileges and immunities of United Nations staff members, experts and their families are fully respected and to seek redress and compensation of the damage caused to them, as well as their full reintegration, when their human rights, privileges and immunities have been violated;

5. Urges Member States, in accordance with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (General Assembly resolution 43/173, annex), to provide adequate and prompt

information concerning the arrest or detention of United Nations staff members, experts and their families, and to grant the representative of the competent international organization access to them without delay;

6. Also urges Member States to allow medical teams to investigate the health of staff members, experts and their families who are being detained in order to provide them with the necessary medical assistance;

7. Calls upon Member States to allow the representative of the competent international organization to attend any hearing concerning United Nations staff members, experts and their families;

8. Requests the existing human rights mechanisms, including the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the question of torture and the Special Rapporteur on extrajudicial, summary or arbitrary executions, to examine as appropriate the cases involving the human rights of staff members of the United Nations system and their families, as well as experts, special rapporteurs and consultants, and to transmit the relevant part of their reports to the Secretary-General for inclusion in his report to the Commission on Human Rights;

9. Welcomes the decision of the General Assembly, contained in its resolution 48/37 of 9 December 1993, to establish an ad hoc committee to elaborate an international convention dealing with the safety and security of United Nations and associated personnel, with particular reference to responsibility for attacks on such personnel, and considers that the timely elaboration of such a convention will contribute to the improvement of the situation;

10. Requests the Secretary-General to submit to the Commission at its fifty-first session an updated version of the report on the situation of United Nations staff members, experts and their families detained, imprisoned, missing or held in a country against their will, including those cases which have been successfully settled since the presentation of the last report, as well as on the implementation of the measures referred to in the present resolution.

55th meeting
4 March 1994
[Adopted without a vote.]

1994/43. Question of human rights and states of emergency

The Commission Human Rights,

Noting resolution 1993/28 of 25 August 1993 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recommends the following draft decision to the Economic and Social Council for adoption:

"The Economic and Social Council, taking note of Commission on Human Rights resolution 1994/43 of 4 March 1994 and of resolution 1993/28 of 25 August 1993 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, endorses the requests by the Sub-Commission:

(a) To Mr. Leandro Despouy, Special Rapporteur on human rights and states of emergency, to continue to update the list of states of emergency and to include in his annual report to the Sub-Commission and the Commission recommendations on inalienable or non-derogable rights;

(b) To the Secretary-General to provide the Special Rapporteur with all the assistance he may require to carry out his work, to maintain cooperation with the different sources of information and databases, and to process the information submitted to him in an effective way."

55th meeting
4 March 1994
[Adopted without a vote.]

1994/44. Question of the impunity of perpetrators of violations of human rights

The Commission on Human Rights,

Guided by the principles enshrined in the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, other relevant human rights instruments and the Geneva Conventions of 12 August 1949,

Recalling the interdependence and indivisibility of civil and political rights and economic and social rights,

Convinced that the increasingly widespread practice worldwide of impunity for perpetrators of violations of human rights is a fundamental obstacle to the observance of human rights,

Taking note of resolution 1993/37 of 26 August 1993 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities,

1. Welcomes the interim report (E/CN.4/Sub.2/1993/6) prepared by Mr. El Hadji Guissé and Mr. Louis Joinet pursuant to resolution 1992/23 of 27 August 1992 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities;

2. Endorses the Sub-Commission's request to Mr. Guissé and Mr. Joinet to submit a report, including conclusions and recommendations, on the first aspect of the question of impunity, with respect to civil and political rights, to the Sub-Commission at its forty-sixth session and to continue their study on the second aspect of the question, concerning economic, social and cultural rights;

3. Requests the Secretary-General to provide the Special Rapporteurs with any assistance required by them to be able to discharge their task;

4. Recommends the following draft resolution to the Economic and Social Council for adoption:

"The Economic and Social Council, taking note of Commission on Human Rights resolution 1994/44 of 4 March 1994, approves the Commission's endorsement of the Sub-Commission's request, contained in its resolution 1993/37, of 26 August 1993, to Mr. El Hadji Guissé and Mr. Louis Joinet to prepare a report on the first aspect of the question of the impunity of perpetrators of violations of human rights, and also approves the Commission's request to the Secretary-General to provide the Special Rapporteurs with any assistance required by them to be able to discharge their task."

55th meeting
4 March 1994
[Adopted without a vote.]